



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FOX ROTHSCHILD LLP
PRINCETON PIKE CORPORATE CENTER
997 LENOX DRIVE
BLDG. #3
LAWRENCEVILLE NJ 08648

MAILED
JAN 18 2011
OFFICE OF PETITIONS

In re Application of
Nicholas Frattalone
Application No. 09/923,161
Filed: August 6, 2001
Attorney Docket No. 32958.00007

DECISION ON PETITION

This is a decision on the petition, filed November 22, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the non-final Office action of March 17, 2010, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on September 24, 2010.

Petitioner contends that the Notice of Abandonment was mailed in error since a timely reply (Request for Continued Examination (RCE)) was received by the office on September 17, 2010, with a three (3) month extension of time by way of the Office Electronic Filing System (EFS). A review of the application file record confirms the receipt by way of EFS of this reply with the fees for a three (3) month extension of time, on September 17, 2010. However, a RCE is not a proper reply as the Office action was a non-final Office action. However, the amendment filed with the RCE on September 17, 2010, will be accepted as the response to the non-final Office action. Thus, the application is not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby **VACATED** and the holding of abandonment **WITHDRAWN**.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at 571-272-4584.

This application is being referred to Technology Center AU 3693 for appropriate action in the normal course of business on the reply received September 17, 2010.

Raynesh Krishnamurthy
Petitions Examiner
Office of Petitions